

REMARKS/ARGUMENTS

In the Official Action, restriction was required as between Claims 1, 11, 21, 31, 38-39, designated as Group I; Claims 2-4, 12-14, 22-24, designated as Group II; Claims 5-8, 15-18, 25-28, 32-35, designated as Group III; and Claims 9-10, 19-20, 29-30, 36-37, designated as Group IV.

This restriction requirement is respectfully traversed.

Election of Species Under Traverse

In response, as a formality merely to comply with §818.03(b), Applicants hereby preliminarily elect Claims 1, 11, 21, 31, 38-39, designated as Group I, for an examination on the merits.

Arguments in Support of Traversal of Restriction

According to the Examiner, MPEP §806.05(c) applies and thus the restriction is proper. It is respectfully submitted that MPEP §806.05(c) specifically recites:

To support a requirement for restriction, both two-way distinctness and reasons for insisting on restriction are necessary, i.e., separate classification, status, or field of search. (Emphasis added)

Example I given in MPEP §806.05(c) related to a proper restriction, also recites:

Where a combination as claimed does not set forth the details of the subcombination as separately claimed and the subcombination has separate utility, the inventions are distinct and restriction is proper if reasons exist for insisting upon the restriction; i.e., separate classification, status, or field of search. (Emphasis added)

Without agreeing with the Examiner, and assuming arguendo that MPEP §806.05(c) applies, it is respectfully submitted, that the requirement for a proper restriction of showing "separate classification, status, or field of search" has not been shown. In fact, groups I, III, and IV, are classified in the exact same classification, namely, class 705, subclasses 10 and 26.

It is Applicants' position that in fact each of the claims are drawn essentially to a single embodiment (see, FIG. 1 of the present patent application) defining the same essential features and are not drawn to separate species.

The MPEP in § 806.03 makes clear that (emphasis provided) "[w]here the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required." The MPEP goes on further to state the motivation for the above requirement is "because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition."

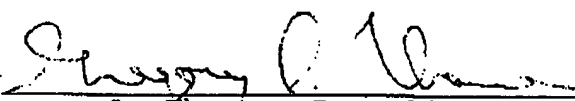
The MPEP in §803 makes clear that a restriction between patentably distinct inventions is only proper if the inventions are independent or distinct as claimed and there is a serious burden on the examiner if a restriction is not required. A serious burden on the examiner is prima facie shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search (see, further MPEP §808.02). However, where "the classification is the same and the field of search is the same and there is no clear indication of

separate future classification and field of search, no reasons exist for dividing among related inventions." Yet, the Office Action has done no more than to state that they are separate and distinct without any suitable showing or explanation for this distinction.

Accordingly, it is respectfully requested that the restriction requirement be withdrawn and that the claims be examined on the merits. In the event that this restriction requirement is upheld, it is respectfully requested that it be restated in a non-final form with support for the requirement so that the Applicants may address that support in a subsequent response.

A favorable action on the merits is earnestly solicited.

Respectfully submitted,

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